

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.3892 of 2007

Mansoor Gulamhusein Curmally & anr.	Petitioners
Vs.	
Huseinbhai Taherbhai Kudrati	Respondent

Mr.V.Y.Sanglikar with Mr.P.R.Vakil and Mr.S.G. Vakil
for petitioners.

Mr.P.K.Dhakephalkar, Senior Counsel with Mr.Divyakant
Mehta for respondent.

CORAM: B.H.MARLAPALLE, J.

June 8, 2007.

P.C.

. Heard Mr.Sanglikar with Mr.Vakil, the learned
counsel for the petitioners. Mr.Dhakephalkar, the
learned Senior Counsel appears with Mr.V.J. Mehta
for the respondent-landlord. This petition filed
under Article 227 of the Constitution arises from an
interlocutory order passed by the lower Appellate
Court on the application at Exhibit 5 filed in the
pending appeal. By the said order dated 20/1/2007
the lower Appellate Court has directed the
petitioners to deposit an amount of Rs.23,32,041.88
and from the same the original plaintiff has been
allowed to withdraw an amount of Rs.1,60,859.20.

. The main crux of the arguments advanced before me by the learned counsel for the petitioners regarding the calculations at Exhibit "A" i.e. a table showing the calculations of taxes payable upto 30th June 2006. It was submitted that instead of calculating the tax amount on the annual basis, it was calculated on monthly basis and multiplied by 12 and, therefore, the decretal amount would not be Rs.23,32,041/-. On the other hand Mr.Dhakephalkar, the learned Senior Counsel has referred to the bills forwarded by the Tax Collector right from 1986 onwards and stated that the amount of Rs.1459/- was the rental amount per month and not per annum. Mr.Sanglikar referring to the assessment table published by the Municipal Corporation of Greater Bombay pointed out that for a ratable value of Rs.2272/- the monthly rent will be Rs.122/- and, therefore, the annual rental amount will come to Rs.1464/-.

. It is also noted from the record and it is reflected in the order passed by the trial Court that from time to time the petitioners were directed to deposit certain amounts towards the arrears of payment of taxes and the petitioners failed to do so.

Consequently, their defence was struck off.

. The decree passed by the trial Court and which decree is under appeal states that the amount of Rs.23,32,041/- is required to be paid with simple interest at 9 % per annum within six months and the interest amount calculated at Exhibit is almost Rs.17,43,624/-. The lower Appellate Court has not directed the petitioners to deposit the said amount with interest and it has directed to deposit only an amount of arrears at Rs.23,32,041/-. Mr.Sanglikar referred to the provisions of Order XLI Rule 1 as amended and applicable in the State of Maharashtra. He submitted that it is the discretion of the Court to decide the amount to be deposited and in a given case the Appellate Court may dispense with deposit where it deems fit to do so for sufficient reasons. He also pointed out that an amount of Rs.95,000/- has already been deposited.

. Having regards to the reasoning set out by the lower Appellate Court in the impugned order and also the fact that the interest amount is over and above the amount directed to be deposited, I do not find any case made out to cause interference in the

impugned interlocutory order under the supervisory powers of this Court. By the earlier order dated 18th May 2007 passed by the learned Vacation Judge, the date to deposit was extended by one month i.e. upto 20th June 2007.

. The petition is rejected summarily. However, the date to deposit the amount is extended upto 15th July 2007. Hearing of the appeal is expedited subject, however, to the condition of deposit.

(B.H.MARL